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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/086,821	05/29/1998	MARCO LARA	ATV-004	8789
21323	7590	02/09/2004	EXAMINER	
TESTA, HURWITZ & THIBEAULT, LLP			SALAD, ABDULLAHI ELM	
HIGH STREET TOWER			ART UNIT	PAPER NUMBER
125 HIGH STREET			2157	30
BOSTON, MA 02110			DATE MAILED: 02/09/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

A2y

<b>Office Action Summary</b>	Application N .	Applicant(s)
	09/086,821	LARA ET AL.
	Examin r	Art Unit
	Salad E Abdullahi	2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 November 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,6-16,20 and 25-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-16, 20 and 25-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

### **Response to Amendment**

1. Applicant's Amendment filed on 11/17/2003 with respect to claims 1, 6-16, 20 and 25-33 have been fully considered but they are not persuasive for the following reasons.

Applicant alleges "Hu fails to disclose or suggest Redirecting by that web server at least one browser request from that web server to another web server". Examiner respectfully disagrees, because Hu discloses a system for distributing user requests among plurality content servers 106 and 102. For example request manager 102 which also can act as a content server receives request and redirects that request to another content server (the same content server 102 who receives the request is the one that redirects the request to another content server)(see col. 5, lines 3-8 and col. 12, lines 35-42).

### **Claim Rejections - 35 USC § 102**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371c of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November-29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 6-16, 20 and 25, 26 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Hu U.S. Patent No. 6,173,322.

As per claim 1, 15 and 20, Hu, discloses a system for distributing client requests among two or more servers, comprising:

- monitoring the servers to determine if a predetermined condition (i.e. failed or overloaded (see col. 15, lines 11-16));
- if the predetermined condition does exist at least one of the servers, redirecting by that server at least one client request from that server to another one of the servers (see col. 6, lines 11-22 and col. 4, line 66 to col. 5, line 8).

In considering claim 6, Hu discloses a system, wherein the monitoring step comprises monitoring the system load of the host server (see col. 15, lines 1-16).

In considering claims 7-8, and 14, Hu discloses a system, wherein the predetermined condition comprises a CPU utilization or memory or failure etc (see col. 9, lines 19-46).

In considering claims 9-13 and 16, Hu discloses a system, wherein the redirecting step comprises redirecting only if certain redirection criteria are met (see col. 12, lines 10-42).

In considering claim 25, Hu discloses a system, wherein the step of redirecting is initiated by an agent (redirection module 212) running on the same host as the server

and communication with the server interface, wherein the agent instructs the server to redirect the request (see col. 5, lines 20-54).

In considering claims 26 and 31, Hu discloses a system for distributing content request among two or more servers, comprising:

- monitoring by a central manager (request manager 102) the servers to determine if a predetermined condition exists (i.e. failed or overloaded) at one or more of the servers (see col. 5, lines 20-54 and col. 15, lines 10-60);
- if the predetermined condition does exist at least one of the servers, redirecting by that server at least one client request from that server to another one of the servers wherein the step of redirecting is initiated by an agent (redirection module 212) running on the same host as the server and communication with the server interface, wherein the agent instructs the server to redirect the request (see col. 6, lines 11-22, col. 4, line 66 to col. 5, line 8 and col. 5, lines 20-54).

### **Claim Rejections - 35 USC § 103**

**4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**5. Claims 27-30, are rejected under 35 U.S.C. 103(a) as being anticipated by Hu U.S. Patent No. 6,173,322.**

As per claims 27 and 29 Hu, discloses a system for distributing client requests among two or more servers, comprising:

- monitoring the servers to determine if a predetermined condition (i.e. failed or overloaded) (see col. 15, lines 1-16);
- if the predetermined condition does exist at least one of the servers, redirecting by that server at least one client request from that server to another one of the servers (see col. 6, lines 11 -22 and col. 4, line 66 to col. 5, line 8).

Hu, is silent regarding the monitoring step includes monitoring request queue delay. Nonetheless, monitoring the request queue delay of the servers would have been an obvious modification to Hu's system. Furthermore, Hu teaches performance characteristics or QOS parameters might be measured in a number of different ways such as measuring server response time to determine the status of the servers or how the servers are loaded. One skilled in the art would have been motivated to measure queue delay which contributes the server response time (see col. 9, lines 20).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize QOS parameters such request queue delay which is more accurate indicative of the current load of a web servers in order to provide dynamic redirection and overload protection.

In considering claims 28, 30, 32 and 33, Although Hu discloses substantial features of the claimed as discussed above with respect to claims 27, 26 and 31, Hu, is silent regarding: the predetermined condition comprises request queue delay length greater

than a predetermined number. Nonetheless, the predetermined condition comprises request queue delay length greater than a predetermined number would have been an obvious modification to Hu's system. Furthermore, Hu teaches performance characteristics or QOS parameters might be measured in a number of different ways such as measuring server response time to determine the status of the servers or how the servers are loaded (see col. 9, lines 20). Additionally, Hu teaches the monitoring module can be configured to fit users needs. Hence one skilled in the art presented with teaching of Hu would have been motivated to check if the request queue delay length of the server is greater than a predetermined number or certain threshold to dynamically redirect requests to other servers. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize QOS parameters such determining number of requests in the queue delay in order to provide dynamic redirection and overload protection.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **CONCLUSION**

7. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. 10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdullahi E. Salad whose telephone number is (703) 308-8441. The examiner can be reached on Monday to Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Etienne, Ario can be reached at (703) 308-7562. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

**Any response to this action should mailed to:**

Box AF

Commissioner of Patents and Trademarks  
Washington, DC 20231

**or faxed to:**

**(703) (872-9306).**

02/5/2004

AS



ARIO ETIENNE  
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